

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

OLETA BROWN

Claimant

VS.

FRITO LAY, INC.

Respondent

Self-Insured

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Docket No. 219,171

ORDER

Claimant requested Appeals Board review of the June 5, 1997, preliminary hearing Order Denying Compensation entered by Administrative Law Judge Floyd V. Palmer.

ISSUES

Claimant asked the Appeals Board to review the following issues:

- (1) Whether claimant suffered an occupational disease that arose out of and in the course of her employment with the respondent.
- (2) Whether the Administrative Law Judge exceeded his jurisdiction when he denied claimant's request for preliminary compensation benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

Claimant commenced working for the respondent on November 20, 1995. In June of 1996, claimant came down with a sore throat, fever, and headache. She sought medical

treatment for these conditions from her family physician, Joel R. Hutchins, M.D., on June 18, 1996. Dr. Hutchins treated the claimant with medication and took her off work for a few days. Claimant then developed a persistent cough. Dr. Hutchins referred claimant to Emil J. Kleinholz, M.D., a pulmonary specialist, in Topeka, Kansas. Dr. Hutchins' medical records, admitted into evidence at the preliminary hearing, noted on July 8, 1996, that claimant's referral was being made for a bronchitis condition.

Dr. Kleinholz saw claimant on July 10, 1996, and his assessment was possible asthma or some hyper-reactivity of the airways following an episode of active bronchitis. The doctor prescribed two different mouth inhalers and one nasal inhaler for these conditions. Dr. Kleinholz saw claimant again on July 24, 1996, and claimant was much improved. At that time, the doctor made a definite diagnosis that the claimant had asthma. Dr. Kleinholz's medical reports to Dr. Hutchins concerning the examination and treatment of the claimant on July 10, 1996, and July 24, 1996, contain no statements that either the claimant or the doctor related her asthma condition to claimant's employment. Dr. Hutchins' medical records indicate that he took claimant off work at various times from June 18, 1996, through December 16, 1996. These off-work slips indicate that the reason claimant was unable to work was due to asthma, sinus, allergic bronchitis or coughing up green phlegm.

The last time that Dr. Kleinholz saw claimant was on December 9, 1996. Again, he diagnosed claimant with an asthma condition. After this examination, Dr. Kleinholz, in a report to Dr. Hutchins, makes the observation "it may be that she does have some exacerbation of her asthma related to some compound or compounds at her place of employment." The doctor continued claimant on a mouth inhaler and released her from further treatment indicating there was no need for the claimant to see him another time.

Dr. Hutchins' medical records indicate that the last time claimant requested treatment was December 6, 1996, when she called Dr. Hutchins' office complaining of her left ear hurting, headache, and sinus problems.

The respondent terminated claimant on February 7, 1997, for what claimant alleged was a violation of the family medical leave act. Claimant testified that after her termination she applied for unemployment benefits. At the time of the preliminary hearing, June 4, 1997, claimant was not working and was receiving unemployment benefits. Claimant also testified that she was not having any significant health problems. Claimant further testified she was not coughing and was not taking any medication for any type of respiratory problem.

The Administrative Law Judge denied claimant's request for medical treatment and temporary total disability compensation for her asthma condition which she claims was either caused or aggravated by her work environment. The Administrative Law Judge found claimant's testimony was inconsistent and the medical evidence contained in the

preliminary hearing record had failed to prove that claimant's asthma condition was more probably than not caused or aggravated by her work.

On the other hand, claimant argues that her testimony coupled with the medical records did prove that there was a causal relationship between her work and her asthma condition. The claimant points to the fact that she did not have the asthmatic symptoms before she started working for the respondent. Additionally, claimant argues the fact that her asthma condition improved when she was away from work shows that there was a relationship between her work environment and the asthma condition.

The Appeals Board finds that the medical evidence contained in the preliminary hearing record does not meet claimant's burden of proving her work either caused or aggravated her asthma condition. Therefore, the Appeals Board concludes that the Administrative Law Judge's Order should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order Denying Compensation entered by Administrative Law Judge Floyd V. Palmer on June 5, 1997, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of July 1997.

BOARD MEMBER

c: Paul D. Post, Topeka, KS
Brian J. Fowler, Kansas City, MO
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director